



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

2110 Ironwood Parkway • Coeur d'Alene, Idaho 83814-2648 • (208) 769-1422

Dirk Kempthorne, Governor  
Toni Hardesty, Director

November 5, 2004

Mr. Lindsay Gorrill  
Emerald Creek Garnet Ltd.  
1301 West Lakewood Drive, Suite 201  
Coeur d'Alene, ID 83814

RE: Army Corps Public Notice NWW No. 981101710 St. Maries River

Dear Mr. Gorrill,

We have reviewed the Final EIS, Final Work Plan (Appendix G of FEIS) and the Plan of Operation for St. Maries Floodplain Dredge Mining Permit (edited July 2004) that propose to discharge dredged and fill material into 133 acres of wetlands associated with the mining of garnets along the floodplain of the St. Maries River. This work will also include compliance with the St. Maries River total maximum daily load as described in the Final Work Plan.

Under Section 401 of the Federal Clean Water Act (CWA), federal agencies issuing discharge permits must be provided a notice of certification from the State of Idaho that the project will meet state water quality standards. By copy of this letter, the Army Corps of Engineers is being notified of our certification decision. In order for there to be a reasonable assurance of compliance with state water quality standards, the following conditions shall be applied to the Army Corps of Engineers Permit for the project:

1. The Water Quality Monitoring Plan as outlined in the FEIS shall be implemented in such a manner as to achieve its 5 stated goals. Data shall be compiled, interpreted, applied and reported, as necessary to satisfy the 5 stated goals. A summary of this effort shall be sent to DEQ Coeur d'Alene Regional Office once each year for the first 3 years of active mining. Thereafter, until the goals are met this effort shall be recorded and available for agency inspection at the Emerald Creek Garnet Ltd. Fernwood office.
2. Siltation berm failures or other situations that discharge process water into a water of the state shall be reported to the DEQ Coeur d'Alene Regional Office within 24 hours of discovery.

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3. In the event of a petroleum product or other hazardous material spill that may enter waters of the state, the State Communications Center shall be contacted immediately at 1-800-632-8000. All field employees shall have ready access to the State Communications Center number.
4. This project proposes a new discharge of sediment to the St. Maries River after DEQ developed the St. Maries River Subbasin Assessment and TMDL (July 2003). The St. Maries TMDL did not provide an allocation for this project. Therefore, to comply with the Idaho Water Quality Standards and Wastewater Treatment Requirements (IDAPA 58.01.02) and in order to be consistent with the St. Maries TMDL, there can be no net increase in sediment load from this project. Compliance with this requirement shall be guided by your Final Work Plan dated May 28, 2004 and found in Appendix G of the FEIS. The following requirements and deadlines associated with the sediment reduction project(s) are as follows:
  - The sediment load reduction project(s) shall be initiated prior to or concurrent with the active mining work.
  - The full amount of the no net sediment increase shall be realized by the end of the subject active mining phase (estimated to be 20 years).
  - Using the methodology outlined in the Final Work Plan, prepare a brief "end of project" report that includes the calculations used to determine the amount of sediment reduction required to achieve a no net increase, a description of the completed sediment reduction project(s) and their locations, and finally, the modeled sediment reduction achieved by the project(s). This report shall be provided to the DEQ Coeur d'Alene Regional Office by year 19 of active mining.

If construction is completed in accordance with the Final Work Plan, the Final EIS, the Plan of Operation and above conditions, DEQ certifies under Section 401 that this construction will comply with applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and will not violate Idaho Water Quality Standards and Wastewater Treatment Requirements.

Any modification or amendment to the project, which DEQ expects will result in additional impacts to water quality, shall require a new 401 water quality certification from DEQ before any construction activities affected by the modification or amendment may proceed.

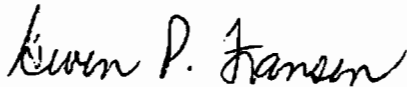
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All construction activities authorized under the referenced permit shall cease for failure of the applicant to comply with the conditions of this certification and shall not resume until the applicant demonstrates to the satisfaction of DEQ compliance with all the conditions of this certification.

This §401 Water Quality Certification may be appealed pursuant to the Environmental Protection and Health Act, Idaho Code 39-107(5), the Idaho Administrative Procedure Act and the rules of Administrative Procedure before the Board of Environmental Quality, IDAPA 58.01.23. Such an appeal is a prerequisite to any district court action and must be initiated by filing a petition for a contested case in accordance with the Rules of Administrative Procedure before the Board of Environmental Quality (IDAPA 58.01.23) within thirty-five days of the date of this 401 certification.

This certification does not imply approval of the activity by other agencies of the State of Idaho.

Sincerely,



Gwen P. Fransen, Regional Administrator  
Coeur d'Alene Regional Office

cc: Michael Doherty, Army Corps of Engineers - Coeur d'Alene  
Barbara Benge, Army Corps of Engineers - Walla Walla  
Jim Brady, Idaho Department of Lands  
Mary Terra-Berns, Idaho Fish and Game  
John Olson, U.S. Environmental Protection Agency